

§ 1026.20

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the preparation or delivery of the disclosures required under paragraph (f)(1)(i) of this section.

(g) *Special information booklet at time of application.* (1) *Creditor to provide special information booklet.* Except as provided in paragraphs (g)(1)(ii) and (iii) of this section, the creditor shall provide a copy of the special information booklet (required pursuant to section 5 of the Real Estate Settlement Procedures Act (12 U.S.C. 2604) to help consumers applying for federally related mortgage loans understand the nature and cost of real estate settlement services) to a consumer who applies for a consumer credit transaction secured by real property.

(i) The creditor shall deliver or place in the mail the special information booklet not later than three business days after the consumer's application is received. However, if the creditor denies the consumer's application before the end of the three-business-day period, the creditor need not provide the booklet. If a consumer uses a mortgage broker, the mortgage broker shall provide the special information booklet and the creditor need not do so.

(ii) In the case of a home equity line of credit subject to §1026.40, a creditor or mortgage broker that provides the consumer with a copy of the brochure entitled "When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit," or any successor brochure issued by the Bureau, is deemed to be in compliance with this section.

(iii) The creditor or mortgage broker need not provide the booklet to the consumer for a consumer credit transaction secured by real property, the purpose of which is not the purchase of a one-to-four family residential property, including, but not limited to, the following:

- (A) Refinancing transactions;
- (B) Closed-end loans secured by a subordinate lien; and
- (C) Reverse mortgages.

(2) *Permissible changes.* Creditors may not make changes to, deletions from, or additions to the special information booklet other than the changes specified in paragraphs (g)(2)(i) through (iv) of this section.

(i) In the "Complaints" section of the booklet, "the Bureau of Consumer Financial Protection" may be substituted for "HUD's Office of RESPA" and "the RESPA office."

(ii) In the "Avoiding Foreclosure" section of the booklet, it is permissible to inform homeowners that they may find information on and assistance in avoiding foreclosures at <http://www.consumerfinance.gov>. The reference to the HUD Web site, <http://www.hud.gov/foreclosure/>, in the "Avoiding Foreclosure" section of the booklet shall not be deleted.

(iii) In the "No Discrimination" section of the appendix to the booklet, "the Bureau of Consumer Financial Protection" may be sub-

stituted for the reference to the "Board of Governors of the Federal Reserve System." In the Contact Information section of the appendix to the booklet, the following contact information for the Bureau may be added: "Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552; www.consumerfinance.gov/learnmore." The contact information for HUD's Office of RESPA and Interstate Land Sales may be removed from the "Contact Information" section of the appendix to the booklet.

(iv) The cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the title appearing on the cover shall not be changed. Names, addresses, and telephone numbers of the creditor or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover. References to HUD on the cover of the booklet may be changed to references to the Bureau.

§ 1026.20 Subsequent disclosure requirements.

(a) *Refinancings.* A refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation. The following shall not be treated as a refinancing:

(1) A renewal of a single payment obligation with no change in the original terms.

(2) A reduction in the annual percentage rate with a corresponding change in the payment schedule.

(3) An agreement involving a court proceeding.

(4) A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in §1026.4(d).

(5) The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart.

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(b) *Assumptions.* An assumption occurs when a creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligor on an existing residential mortgage transaction. Before the assumption occurs, the creditor shall make new disclosures to the subsequent consumer, based on the remaining obligation. If the finance charge originally imposed on the existing obligation was an add-on or discount finance charge, the creditor need only disclose:

(1) The unpaid balance of the obligation assumed.

(2) The total charges imposed by the creditor in connection with the assumption.

(3) The information required to be disclosed under § 1026.18(k), (l), (m), and (n).

(4) The annual percentage rate originally imposed on the obligation.

(5) The payment schedule under § 1026.18(g) and the total of payments under § 1026.18(h) based on the remaining obligation.

(c) *Variable-rate adjustments.* Except as provided in paragraph (d) of this section, an adjustment to the interest rate with or without a corresponding adjustment to the payment in a variable-rate transaction subject to § 1026.19(b) is an event requiring new disclosures to the consumer. At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but no more than 120, calendar days before a payment at a new level is due, the following disclosures, as applicable, must be delivered or placed in the mail:

(1) The current and prior interest rates.

(2) The index values upon which the current and prior interest rates are based.

(3) The extent to which the creditor has foregone any increase in the interest rate.

(4) The contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance.

(5) The payment, if different from that referred to in paragraph (c)(4) of this section, that would be required to fully amortize the loan at the new in-

terest rate over the remainder of the loan term.

(d) Information provided in accordance with variable-rate subsequent disclosure regulations of other Federal agencies may be substituted for the disclosure required by paragraph (c) of this section.

EFFECTIVE DATE NOTES: 1. At 78 FR 11004, Feb. 14, 2013, § 1026.20 was amended by revising the heading and paragraphs (c) and (d), effective Jan. 10, 2014. For the convenience of the user, the revised text is set forth as follows:

§ 1026.20 Disclosure requirements regarding post-consummation events.

* * * * *

(c) *Rate adjustments with a corresponding change in payment.* The creditor, assignee, or servicer of an adjustable-rate mortgage shall provide consumers with disclosures, as described in this paragraph (c), in connection with the adjustment of interest rates pursuant to the loan contract that results in a corresponding adjustment to the payment. To the extent that other provisions of this subpart C govern the disclosures required by this paragraph (c), those provisions apply to assignees and servicers as well as to creditors. The disclosures required by this paragraph (c) also shall be provided for an interest rate adjustment resulting from the conversion of an adjustable-rate mortgage to a fixed-rate transaction, if that interest rate adjustment results in a corresponding payment change.

(1) *Coverage.* (i) *In general.* For purposes of this paragraph (c), an adjustable-rate mortgage or “ARM” is a closed-end consumer credit transaction secured by the consumer’s principal dwelling in which the annual percentage rate may increase after consummation.

(ii) *Exemptions.* The requirements of this paragraph (c) do not apply to:

(A) ARMs with terms of one year or less; or

(B) The first interest rate adjustment to an ARM if the first payment at the adjusted level is due within 210 days after consummation and the new interest rate disclosed at consummation pursuant to § 1026.20(d) was not an estimate.

(2) *Timing and content.* Except as otherwise provided in paragraph (c)(2) of this section, the disclosures required by this paragraph (c) shall be provided to consumers at least 60, but no more than 120, days before the first payment at the adjusted level is due. The disclosures shall be provided to consumers at least 25, but no more than 120, days before the first payment at the adjusted level is due for ARMs with uniformly scheduled interest rate adjustments occurring every 60 days or

more frequently and for ARMs originated prior to January 10, 2015 in which the loan contract requires the adjusted interest rate and payment to be calculated based on the index figure available as of a date that is less than 45 days prior to the adjustment date. The disclosures shall be provided to consumers as soon as practicable, but not less than 25 days before the first payment at the adjusted level is due, for the first adjustment to an ARM if it occurs within 60 days of consummation and the new interest rate disclosed at consummation pursuant to § 1026.20(d) was an estimate. The disclosures required by this paragraph (c) shall include:

- (i) A statement providing:
 - (A) An explanation that under the terms of the consumer's adjustable-rate mortgage, the specific time period in which the current interest rate has been in effect is ending and the interest rate and mortgage payment will change;
 - (B) The effective date of the interest rate adjustment and when additional future interest rate adjustments are scheduled to occur; and
 - (C) Any other changes to loan terms, features, or options taking effect on the same date as the interest rate adjustment, such as the expiration of interest-only or payment-option features.
- (ii) A table containing the following information:
 - (A) The current and new interest rates;
 - (B) The current and new payments and the date the first new payment is due; and
 - (C) For interest-only or negatively-amortizing payments, the amount of the current and new payment allocated to principal, interest, and taxes and insurance in escrow, as applicable. The current payment allocation disclosed shall be the payment allocation for the last payment prior to the date of the disclosure. The new payment allocation disclosed shall be the expected payment allocation for the first payment for which the new interest rate will apply.
- (iii) An explanation of how the interest rate is determined, including:
 - (A) The specific index or formula used in making interest rate adjustments and a source of information about the index or formula; and
 - (B) The type and amount of any adjustment to the index, including any margin and an explanation that the margin is the addition of a certain number of percentage points to the index, and any application of previously foregone interest rate increases from past interest rate adjustments.
- (iv) Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan, as applicable, including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the earliest date that such fore-

gone interest rate increases may apply to future interest rate adjustments, subject to those limits.

(v) An explanation of how the new payment is determined, including:

- (A) The index or formula used;
- (B) Any adjustment to the index or formula, such as the addition of a margin or the application of any previously foregone interest rate increases from past interest rate adjustments;
- (C) The loan balance expected on the date of the interest rate adjustment; and
- (D) The length of the remaining loan term expected on the date of the interest rate adjustment and any change in the term of the loan caused by the adjustment.

(vi) If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and will pay only part of the loan interest, thereby adding to the balance of the loan. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement shall set forth the payment required to amortize fully the remaining balance at the new interest rate over the remainder of the loan term.

(vii) The circumstances under which any prepayment penalty, as defined in § 1026.32(b)(6)(i), may be imposed, such as when paying the loan in full or selling or refinancing the principal dwelling; the time period during which such a penalty may be imposed; and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty.

(3) *Format.* (i) The disclosures required by this paragraph (c) shall be provided in the form of a table and in the same order as, and with headings and format substantially similar to, forms H-4(D)(1) and (2) in appendix H to this part; and

(ii) The disclosures required by paragraph (c)(2)(ii) of this section shall be in the form of a table located within the table described in paragraph (c)(3)(i) of this section. These disclosures shall appear in the same order as, and with headings and format substantially similar to, the table inside the larger table in forms H-4(D)(1) and (2) in appendix H to this part.

(d) *Initial rate adjustment.* The creditor, assignee, or servicer of an adjustable-rate mortgage shall provide consumers with disclosures, as described in this paragraph (d), in connection with the initial interest rate adjustment pursuant to the loan contract. To the extent that other provisions of this subpart C govern the disclosures required by this paragraph (d), those provisions apply to

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assignees and servicers as well as to creditors. The disclosures required by this paragraph (d) shall be provided as a separate document from other documents provided by the creditor, assignee, or servicer. The disclosures shall be provided to consumers at least 210, but no more than 240, days before the first payment at the adjusted level is due. If the first payment at the adjusted level is due within the first 210 days after consummation, the disclosures shall be provided at consummation.

(1) *Coverage.* (i) *In general.* For purposes of this paragraph (d), an adjustable-rate mortgage or “ARM” is a closed-end consumer credit transaction secured by the consumer’s principal dwelling in which the annual percentage rate may increase after consummation.

(ii) *Exemptions.* The requirements of this paragraph (d) do not apply to ARMs with terms of one year or less.

(2) *Content.* If the new interest rate (or the new payment calculated from the new interest rate) is not known as of the date of the disclosure, an estimate shall be disclosed and labeled as such. This estimate shall be based on the calculation of the index reported in the source of information described in paragraph (d)(2)(iv)(A) of this section within fifteen business days prior to the date of the disclosure. The disclosures required by this paragraph (d) shall include:

(i) The date of the disclosure.

(ii) A statement providing:

(A) An explanation that under the terms of the consumer’s adjustable-rate mortgage, the specific time period in which the current interest rate has been in effect is ending and that any change in the interest rate may result in a change in the mortgage payment;

(B) The effective date of the interest rate adjustment and when additional future interest rate adjustments are scheduled to occur; and

(C) Any other changes to loan terms, features, or options taking effect on the same date as the interest rate adjustment, such as the expiration of interest-only or payment-option features.

(iii) A table containing the following information:

(A) The current and new interest rates;

(B) The current and new payments and the date the first new payment is due; and

(C) For interest-only or negatively-amortizing payments, the amount of the current and new payment allocated to principal, interest, and taxes and insurance in escrow, as applicable. The current payment allocation disclosed shall be the payment allocation for the last payment prior to the date of the disclosure. The new payment allocation disclosed shall be the expected payment allocation for the first payment for which the new interest rate will apply.

(iv) An explanation of how the interest rate is determined, including:

(A) The specific index or formula used in making interest rate adjustments and a source of information about the index or formula; and

(B) The type and amount of any adjustment to the index, including any margin and an explanation that the margin is the addition of a certain number of percentage points to the index.

(v) Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan, as applicable, including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits.

(vi) An explanation of how the new payment is determined, including:

(A) The index or formula used;

(B) Any adjustment to the index or formula, such as the addition of a margin;

(C) The loan balance expected on the date of the interest rate adjustment;

(D) The length of the remaining loan term expected on the date of the interest rate adjustment and any change in the term of the loan caused by the adjustment; and

(E) If the new interest rate or new payment provided is an estimate, a statement that another disclosure containing the actual new interest rate and new payment will be provided to the consumer between two and four months before the first payment at the adjusted level is due for interest rate adjustments that result in a corresponding payment change.

(vii) If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and will pay only part of the loan interest, thereby adding to the balance of the loan. If the new payment will result in negative amortization as a result of the interest rate adjustment, the statement shall set forth the payment required to amortize fully the remaining balance at the new interest rate over the remainder of the loan term.

(viii) The circumstances under which any prepayment penalty, as defined in § 1026.32(b)(6)(i), may be imposed, such as when paying the loan in full or selling or refinancing the principal dwelling; the time period during which such a penalty may be imposed; and a statement that the consumer may contact the servicer for additional information, including the maximum amount of the penalty.

(ix) The telephone number of the creditor, assignee, or servicer for consumers to call if

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they anticipate not being able to make their new payments.

(x) The following alternatives to paying at the new rate that consumers may be able to pursue and a brief explanation of each alternative, expressed in simple and clear terms:

(A) Refinancing the loan with the current or another creditor or assignee;

(B) Selling the property and using the proceeds to pay the loan in full;

(C) Modifying the terms of the loan with the creditor, assignee, or servicer; and

(D) Arranging payment forbearance with the creditor, assignee, or servicer.

(xi) The Web site to access either the Bureau list or the HUD list of homeownership counselors and counseling organizations, the HUD toll-free telephone number to access the HUD list of homeownership counselors and counseling organizations, and the Bureau Web site to access contact information for State housing finance authorities (as defined in §1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

(3) *Format.* (i) Except for the disclosures required by paragraph (d)(2)(i) of this section, the disclosures required by this paragraph (d) shall be provided in the form of a table and in the same order as, and with headings and format substantially similar to, forms H-4(D)(3) and (4) in appendix H to this part;

(ii) The disclosures required by paragraph (d)(2)(i) of this section shall appear outside of and above the table required in paragraph (d)(3)(i) of this section; and

(iii) The disclosures required by paragraph (d)(2)(iii) of this section shall be in the form of a table located within the table described in paragraph (d)(3)(i) of this section. These disclosures shall appear in the same order as, and with headings and format substantially similar to, the table inside the larger table in forms H-4(D)(3) and (4) in appendix H to this part.

2. At 78 FR 63005, Oct. 23, 2013, § 1026.20 was amended by removing “or” from the end of paragraph (c)(1)(ii)(A); removing the period from the end of paragraph (c)(1)(ii)(B) and adding in its place “; or”; adding paragraph (c)(1)(ii)(C), effective Jan. 10, 2014. For the convenience of the user, the added text is set forth as follows:

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(c) * * *

(1) * * *

(ii) * * *

(C) The creditor, assignee or servicer of an adjustable-rate mortgage when the servicer on the loan is subject to the Fair Debt Collections Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) with regard to the loan and the

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consumer has sent a notification pursuant to FDCPA section 805(c) (15 U.S.C. 1692c(c)).

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3. At 78 FR 80111, Dec. 31, 2013, § 1026.20 was amended by adding paragraph (e), effective Aug. 1, 2015. For the convenience of the user, the added text is set forth as follows:

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(e) *Escrow account cancellation notice for certain mortgage transactions*—(1) *Scope.* In a closed-end consumer credit transaction secured by a first lien on real property or a dwelling, other than a reverse mortgage subject to § 1026.33, for which an escrow account was established in connection with the transaction and will be cancelled, the creditor or servicer shall disclose the information specified in paragraph (e)(2) of this section in accordance with the form requirements in paragraph (e)(4) of this section, and the timing requirements in paragraph (e)(5) of this section. For purposes of this paragraph (e), the term “escrow account” has the same meaning as under 12 CFR 1024.17(b), and the term “servicer” has the same meaning as under 12 CFR 1024.2(b).

(2) *Content requirements.* If an escrow account was established in connection with a transaction subject to this paragraph (e) and the escrow account will be cancelled, the creditor or servicer shall clearly and conspicuously disclose, under the heading “Escrow Closing Notice,” the following information:

(i) A statement informing the consumer of the date on which the consumer will no longer have an escrow account; a statement that an escrow account may also be called an impound or trust account; a statement of the reason why the escrow account will be closed; a statement that without an escrow account, the consumer must pay all property costs, such as taxes and homeowner’s insurance, directly, possibly in one or two large payments a year; and a table, titled “Cost to you,” that contains an itemization of the amount of any fee the creditor or servicer imposes on the consumer in connection with the closure of the consumer’s escrow account, labeled “Escrow Closing Fee,” and a statement that the fee is for closing the escrow account.

(ii) Under the reference “In the future”:

(A) A statement of the consequences if the consumer fails to pay property costs, including the actions that a State or local government may take if property taxes are not paid and the actions the creditor or servicer may take if the consumer does not pay some or all property costs, such as adding amounts

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to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than a policy that the consumer could obtain directly;

(B) A statement with a telephone number that the consumer can use to request additional information about the cancellation of the escrow account;

(C) A statement of whether the creditor or servicer offers the option of keeping the escrow account open and, as applicable, a telephone number the consumer can use to request that the account be kept open; and

(D) A statement of whether there is a cut-off date by which the consumer can request that the account be kept open.

(3) *Optional information.* The creditor or servicer may, at its option, include its name or logo, the consumer's name, phone number, mailing address and property address, the issue date of the notice, the loan number, or the consumer's account number on the notice required by this paragraph (e). Except for the name and logo of the creditor or servicer, the information described in this paragraph may be placed between the heading required by paragraph (e)(2) of this section and the disclosures required by paragraphs (e)(2)(i) and (ii) of this section. The name and logo may be placed above the heading required by paragraph (e)(2) of this section.

(4) *Form of disclosures.* The disclosures required by paragraph (e)(2) of this section shall be provided in a minimum 10-point font, grouped together on the front side of a one-page document, separate from all other materials, with the headings, content, order, and format substantially similar to model form H-29 in appendix H to this part. The disclosure of the heading required by paragraph (e)(2) of this section shall be more conspicuous than, and shall precede, the other disclosures required by paragraph (e)(2) of this section.

(5) *Timing*—(i) *Cancellation upon consumer's request.* If the creditor or servicer cancels the escrow account at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by paragraph (e)(2) of this section no later than three business days before the closure of the consumer's escrow account.

(ii) *Cancellations other than upon the consumer's request.* If the creditor or servicer cancels the escrow account and the cancellation is not at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by paragraph (e)(2) of this section no later than 30 business days before the closure of the consumer's escrow account.

(iii) *Receipt of disclosure.* If the disclosures required by paragraph (e)(2) of this section are not provided to the consumer in person,

the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

§ 1026.21 Treatment of credit balances.

When a credit balance in excess of \$1 is created in connection with a transaction (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of a consumer), the creditor shall:

(a) Credit the amount of the credit balance to the consumer's account;

(b) Refund any part of the remaining credit balance, upon the written request of the consumer; and

(c) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than 6 months, except that no further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

§ 1026.22 Determination of annual percentage rate.

(a) *Accuracy of annual percentage rate.*

(1) The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made. The annual percentage rate shall be determined in accordance with either the actuarial method or the United States Rule method. Explanations, equations and instructions for determining the annual percentage rate in accordance with the actuarial method are set forth in appendix J to this part. An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this part if:

(i) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and

(ii) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes and notifies the Bureau in